

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

KENNETH RAWSON, an individual,

Plaintiff,

v.

RECOVERY INNOVATIONS, INC., a
corporation, SAMI FRENCH, an individual,
JENNIFER CLINGENPEEL, an individual,
VASANT HALARNAKAR, M.D., an
individual,

Defendants.

Case No. 3:17-CV-05342 BHS

DEFENDANTS' ANSWER TO
SECOND AMENDED COMPLAINT

I. ANSWER

Defendants answer the allegations of Plaintiff's Second Amended Complaint (hereinafter "Complaint") as follows:

1.1 The allegations of Paragraph 1.1 are denied.

2.1 The allegations of Paragraph 2.1 are admitted.

2.2 The allegations of Paragraph 2.2 are admitted.

2.3 The allegations of Paragraph 2.3 are admitted.

2.4 The allegations of Paragraph 2.4 are admitted.

1 2.5 The allegations of Paragraph 2.5 are admitted.

2 3.1 The allegations of Paragraph 3.1 are admitted, except to the extent that Defendants
3 deny that they are “state actors” subject to any of Plaintiff’s claims which are based on laws and
4 regulations that are otherwise applicable only to governmental agencies.
5

6 3.2 The allegations of Paragraph 3.2 are admitted.

7 3.3 In response to Paragraph 3.3, Defendants admit that Plaintiff sent to Recovery
8 Innovations, Inc. a purported “notice of claim” more than 60 days before the Complaint was filed.
9 Defendants deny that they are “state actors” subject to laws and regulations that are otherwise
10 applicable only to governmental agencies. Defendants are without information sufficient to
11 ascertain the truth of the remaining allegations of this Paragraph. To the extent these allegations
12 consist of legal conclusions, no answer is required. The allegations of this Paragraph are
13 otherwise denied.
14

15 4.1 The allegations of Paragraph 4.1 are admitted.

16 4.2 The allegations of Paragraph 4.2 are admitted, except that Recovery Innovations,
17 Inc. no longer operates a facility at the alleged location.
18

19 4.3 The allegations of paragraph 4.3 consist of legal conclusions for which no answer
20 is required. The allegations of this Paragraph are otherwise denied.

21 4.4 The allegations of paragraph 4.4 consist of legal conclusions for which no answer
22 is required. The allegations of this Paragraph are otherwise denied.

23 4.5 In response to Paragraph 4.5, Defendants admit that Recovery Innovations is
24 licensed and regulated by the State of Washington. The allegations of this Paragraph are
25 otherwise denied.
26

 4.6 The allegations of Paragraph 4.6 are denied.

1 4.7 The allegations of Paragraph 4.7 are admitted.

2 4.8 In response to Paragraph 4.8, the allegations of this paragraph are denied to the
3 extent that they do not present a complete and accurate statement of the basis for Mr. Padilla's
4 opinion. The allegations of Paragraph 4.8 are otherwise admitted.

5 4.9 The allegations of Paragraph 4.9 are admitted.

6 4.10 The allegations of Paragraph 4.10 are denied.

7 4.11 The allegations of Paragraph 4.11 are denied.

8 4.12 The allegations of Paragraph 4.12 are denied.

9 4.13 In response to Paragraph 4.13, Defendants are without information sufficient to
10 ascertain the truth of some allegations of this Paragraph. The allegations of Paragraph 4.13 are
11 otherwise denied.

12 4.14 The allegations of Paragraph 4.14 are denied.

13 4.15 The allegations of Paragraph 4.15 are denied.

14 4.16 The allegations of Paragraph 4.16 are denied.

15 4.17 In response to Paragraph 4.17, Defendants admit that on March 9, 2015, Ms.
16 French and Ms. Clingenpeel and the Pierce County Prosecutor petitioned the Pierce County
17 Superior Court to commit Mr. Rawson involuntarily for an additional 14 days. The remaining
18 allegations of Paragraph 4.17 are denied.

19 4.18 In response to Paragraph 4.18, the allegations of this paragraph are denied to the
20 extent that they do not present and complete and accurate statement of the "grounds" identified
21 in the petition. The allegations of Paragraph 4.18 are otherwise admitted.

22 4.19 The allegations of Paragraph 4.19 are denied.

23 4.20 The allegations of Paragraph 4.20 are denied.

1 4.21 The allegations of Paragraph 4.21 are denied.

2 4.22 The allegations of Paragraph 4.22 are denied.

3 4.23 The allegations of Paragraph 4.23 are denied.

4 4.24 The allegations of Paragraph 4.24 are denied.

5 4.25 In response to Paragraph 4.25, Defendants admit that the Pierce County Superior
6 Court approved the 14-day commitment petition on March 10, 2015. The remaining allegations
7 of Paragraph 4.25 are denied.
8

9 4.26 In response to the allegations of Paragraph 4.26 Defendants deny that the
10 documented observations were “purported.” The allegations of Paragraph 4.26 are otherwise
11 admitted.
12

13 4.27 The allegations of Paragraph 4.27 are denied.

14 4.28 The allegations of Paragraph 4.28 are admitted.

15 4.29 The allegations of Paragraph 4.29 are denied.

16 4.30 The allegations of Paragraph 4.30 are denied.

17 4.31 The allegations of Paragraph 4.31 are denied.

18 4.32 The allegations of Paragraph 4.32 are denied.

19 4.33 In response to Paragraph 4.33, Defendants admit that on March 19, 2015, Ms.
20 French, Vasant Halarnakar, MD and the Pierce County Prosecutor petitioned the court to commit
21 Mr. Rawson involuntarily for 90 days. The remaining allegations of Paragraph 4.33 are denied.
22

23 4.34 In response to Paragraph 4.34, the allegations of this paragraph are denied to the
24 extent that they do not present and complete and accurate statement of the “grounds” alleged in
25 the petition. The allegations of Paragraph 4.34 are otherwise admitted.
26

 4.35 The allegations of Paragraph 4.35 are denied.

1 4.36 The allegations of Paragraph 4.36 are denied.

2 4.37 The allegations of Paragraph 4.37 are denied.

3 4.38 The allegations of Paragraph 4.38 are denied.

4 4.39 In response to Paragraph 4.39, Defendants admit that Dr. Halarnakar observed
5 Mr. Rawson and documented his observations. The allegations of Paragraph 4.39 are otherwise
6 denied.

7 4.40 The allegations of Paragraph 4.40 are denied.

8 4.41 In response to Paragraph 4.41, the allegations of this paragraph are denied to the
9 extent that they do not present and complete and accurate statement of the information available
10 to and relied upon by Dr. Halarnakar. The allegations of Paragraph 4.41 are otherwise an
11 incomplete summary of the records and are therefore denied.

12 4.42 The allegations of Paragraph 4.42 are denied.

13 4.43 In response to Paragraph 4.43, the allegations of this paragraph are denied to the
14 extent that they do not present and complete and accurate statement of what Recovery
15 Innovations “planned” to do. The allegations of Paragraph 4.43 are therefore denied.

16 4.44 The allegations of Paragraph 4.44 are denied.

17 4.45 The allegations of Paragraph 4.45 are denied.

18 4.46 The allegations of Paragraph 4.46 are denied.

19 4.48 In response to Paragraph 4.48, Defendants admit that Ms. French or another
20 Recovery Innovations staff person created an entry in Mr. Rawson’s medical file each day that
21 they detained him that documented the opinion that he presented a danger to himself or others.
22 The allegations of Paragraph 4.48 are otherwise denied.

23 4.49 The allegations of Paragraph 4.49 are denied.

1 4.50 The allegations of Paragraph 4.50 are denied.

2 4.51 In response to Paragraph 4.51, Defendants admit that Dr. James Manley wrote a
3 letter stating that he had evaluated Mr. Rawson and had made certain conclusions regarding him.
4 Defendants are without information sufficient to ascertain the truth of the remaining allegations
5 of Paragraph 4.51.
6

7 4.52 In response to Paragraph 4.52, Defendants admit that the petitioners and the Pierce
8 County Prosecutor did not immediately dismiss the 90-day petition. The allegations of Paragraph
9 4.52 are otherwise denied.
10

11 4.53 The allegations of Paragraph 4.53 are denied.

12 4.54 In response to Paragraph 4.54, Defendants admit that Mr. Rawson rejected a
13 proposal that would have allowed him to avoid further involuntary commitment.

14 4.55 In response to Paragraph 4.55, the allegations of this paragraph are denied to the
15 extent that they do not present and complete and accurate statement of what Dr. Halarnakar and
16 Recovery Innovations “agreed” to do. Upon information and belief, Mr. Rawson never visited a
17 V.A. hospital after his release. The allegations of Paragraph 4.55 are otherwise admitted.
18

19 4.56 In response to Paragraph 4.56, Defendants admit that Mr. Rawson agreed to visit
20 a therapist at the VA after he returned to his home. Upon information and belief, Mr. Rawson
21 never visited a therapist at the VA after he returned to his home. Defendants are without
22 information sufficient to ascertain the truth of the remaining allegations of this Paragraph.

23 4.57 In response to Paragraph 4.57, the allegations of this paragraph are denied to the
24 extent that they do not present and complete and accurate statement of what Dr. Halarnakar, Ms.
25 French and Recovery Innovations “agreed” to do. Upon information and belief, Mr. Rawson
26

1 never visited the Veterans Administration hospital in Portland, Oregon upon his release. The
2 allegations of Paragraph 4.57 are otherwise admitted.
3

4 4.58 The allegations of Paragraph 4.58 are admitted.

5 4.59 In response to Paragraph 4.59, the allegations of this paragraph are denied to the
6 extent that they assert that Mr. Rawson had “no change in his condition.” Defendants admit that
7 Recovery Innovations arranged transport to allow Mr. Rawson to present to the Veterans
8 Administration hospital in Portland, Oregon for voluntary evaluation and treatment.
9

10 4.60 The allegations of Paragraph 4.60 are denied.

11 4.61 The allegations of Paragraph 4.61 are denied.

12 4.62 The allegations of Paragraph 4.62 are denied.

13 4.63 The allegations of Paragraph 4.63 are denied.

14 4.64 The allegations of Paragraph 4.64 are denied.

15 4.65 The allegations of Paragraph 4.65 are denied.

16 4.66 The allegations of Paragraph 4.66 are denied.

17 5.1 The allegations of Paragraph 5.1 are denied.

18 5.2 The allegations of Paragraph 5.2 are denied.

19 5.3 The allegations of Paragraph 5.3 are denied.

20 5.4 The allegations of Paragraph 5.4 are denied.

21 5.5 The allegations of Paragraph 5.5 are denied.

22 5.6 The allegations of Paragraph 5.6 are denied.

23 5.7 The allegations of Paragraph 5.7 are denied.

24 5.8 The allegations of Paragraph 5.8 are denied.

25 5.9 The allegations of Paragraph 5.9 are denied.
26

1 5.10 The allegations of Paragraph 5.10 are denied.

2 5.11 The allegations of Paragraph 5.11 are denied.

3
4 6.1 The allegations of Paragraphs 6.1 through 6.8 consist of a prayer for relief for
5 which no response is required.

6 **II. AFFIRMATIVE DEFENSES**

7 Defendants hereby assert the following affirmative defenses, which are pled in the
8 alternative to the extent they may otherwise be determined mutually exclusive or inconsistent:

9 1. One or more of Plaintiff's claims fail to state a valid claim upon which relief can
10 be granted.

11 2. Defendants have qualified and/or absolute immunity from Plaintiff's claims,
12 including the immunities arising from RCW 71.05.120, by the doctrine of prosecutorial
13 immunity, and/or other grounds in common law or equity.

14 3. Plaintiff's injuries or damages, if any, may have been proximately caused or
15 contributed to by an intervening or superseding cause, and/or a pre-existing condition.

16 4. The damages sought in this action are grossly excessive and disproportionate to
17 any economic damages claimed by Plaintiff. The claim for imposition of such damages violates
18 the Due Process Clause of the U.S. Constitution, as interpreted in *BMW v. Gore*, 517 U.S. 559
19 (1996).

20 5. Plaintiff has failed to join one or more indispensable parties to this action.

21 6. Plaintiff's damages were caused by the acts or omissions of third parties over
22 whom Defendants had no control. In accordance with RCW 4.22.070 or common law, any
23 recovery against Defendants should be reduced to the degree of fault attributable to such third
24 parties.
25
26

1
2 By: /s/ Benjamin Justus
3 Lory R. Lybeck (#14222)
4 Benjamin Justus (#38855)
5 Attorneys for Defendants
6 Chase Bank Building
7 7900 SE 28th St., Fifth Floor
8 Mercer Island, WA 98040
9 206.230.4255 phone
10 206.230.7791 fax
11 ben@lpjustus.com
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26